IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 37 OF 2000

Kadamba Transport Corporation Ltd.,
a Company having their registered
office at KTCL Bus Stand, Panaji,
Goa, represented herein by their
Managing Director, Shri D.C. Sahoo. ...Appellants

Versus

1. Smt. Shashikala Babu Gaonkar,
aged about 39 years, widow,
housewife and her daughter,

2. Kum. Surekha Babu Gaonkar,
aged about 17 years, student

3. Kum. Suvarna Babu Gaonkar,
aged about 14 years, student,

4. Kum. Purnima Babu Gaonkar,
aged about 14 years, student,

5. Shri Vinayak Babu Gaonkar,
aged about 9 years, student,

6. Shri Vinod Babu Gaonkar,
aged about 7 years,
all r/o Velipwada,
Barcem, P.O. Paddy,
Quepem, Goa, and

7. Shri Raghuvir Yesu Naik,
aged about 56 years,
driver, r/o Shiroda,
Ponda, Goa. ...Respondents.

Shri A. R. Kantak, advocate for the appellants.

Shri C. A. Ferreira, advocate for respondent nos. 1 to 6.

CORAM : F. I. REBELLO, J.

DATE : 26th June, 2003.

ORAL JUDGMENT

This is an appeal by the appellants herein, who are the owners of the vehicle, which at the relevant time was being driven by respondent no.7. The Motor Accident Claims

Tribunal came to the conclusion, based on the evidence before it that respondent no.7 was guilty of rash and negligent driving. There is additional evidence in the form of conviction of respondent no.7, in the criminal case on account of rash and negligent driving. It is therefore clear that the accident arose out of rash and negligent driving of respondent no.7. It is not possible, therefore, to disturb that finding of fact. The contention urged on behalf of the appellants was that the pillion rider was not examined. That is of no consequence, considering the evidence that has come on record.

2. We now come to the contention insofar as dependency is concerned. In Paragraph 14 of the Award of the Claims Tribunal, on behalf of the appellants learned counsel himself submitted that the appellants were not in a position to dispute the income of Rs.2,000/- per month and left the matter to the Tribunal. The learned Presiding Judge of the Claims Tribunal relied on the evidence of Laximan Gaonkar, the brother of the deceased and brother-in-law of the claimant. The deceased at the time of his death apart from claimant no.1, left behind five children, all minors aged between 5 to 13 years. The evidence on record also is that the claimant no.1 is not working anywhere. In the evidence of C.W.1 it has further come on record that the deceased used to take cashew plantation on auction, apart from extracting and selling the liquor from cashew apples. He was

cultivating paddy fields and was the Sarpanch of the Village Panchayat. His earnings were around Rs.2,000/- per month. In his cross-examination he admitted that the monthly income of the deceased at Rs.2,000/- per month was only during the cashew season and not throughout the year. He has also deposed regarding the earnings by the claimant no.1 herself and on account of the accident she has no earning capacity and is exclusively attending to domestic work. C.W.2 has also deposed similarly. The Presiding Officer of the Claims Tribunal has examined the evidence and the fact that even a labourer earns Rs.60 to Rs.70/- per day. The Claims Tribunal, therefore, accepted that the deceased would be earning Rs.2,000/- per month. From the school leaving certificate, the deceased was found to be 38 years of age and, therefore, applying the multiplier of 16, deducting 1/3 towards personal expenses, the figure was rounded up to Rs.1,300/- and, accordingly, dependency was worked out. Some other amounts were given.

Considering the above, in my opinion, it is not possible to disturb the findings which are based on the evidence on record before the Tribunal.

For all the aforesaid reasons, there is no merit in this Appeal, which is, accordingly, rejected.

F. I. REBELLO, J.